



VISION2C RESOURCE COUNCIL

July 20, 2020

Mr. Brian Oakey (Brian.Oakey@isda.idaho.gov)
Idaho State Department of Agriculture
P.O. Box 7249
Boise, Idaho 83707

RE: Comments on the ISDA IDAPA 02.03.03 Negotiated Rulemaking

Dear Mr. Oakey,

Please include the following comments into the record. We ask that you address all questions and that the Idaho State Department of Agriculture **NOT** remove 02.03.03.400.05 Wind Velocity Restrictions and 06. Low Flying Prohibitions from ISDA's rules! Vision 2C is a community organization working towards building and advocating for resilient, equitable, and sustainable communities. Among our issues of concern are improper pesticide application, pesticide exposure, and implementation of the Worker Protection Standards. Given the fact that your agency is intimately aware of the farm worker exposure incident that occurred in Canyon County in May of 2019, we find it particularly concerning that the pesticide lobbying firm would push for weakening ISDA's rules. We know pesticide exposure occurs on a regular basis, but up until now there has been no reporting mechanism in place to track these incidents. Pesticide exposure in the field is not just limited to farmworkers, but to others including government employees working in the field. We know of at least one reported pesticide exposure on a government employee conducting field research in the late summer of 2019. We are also aware of reports of aquatic impacts due to improper application of a pesticide in a body of water last summer. In addition, we are also aware of non-licensed landscape company employees applying pesticides without the proper training or licenses, thereby increasing the potential for improper pesticide application leading to water, aquatic and human exposure. These actions, by both aerial and ground applicators are not acceptable. ISDA's job is not to protect the pesticide industry at the expense of public health and the environment.

We are opposed to the proposed CA license if the input we provide below is not incorporated. We are adamantly opposed to the proposed deletion of the Wind Velocity Restrictions and Low Flying Prohibitions, and Hazard Areas. Please find our specific comments and concerns below based on the proposed changes to the existing rule.



1. Reference: **2VC Comment:** There are sections in IDAPA 02.03.03 where ISDA is proposing referencing the ISDA website for specific guidance language. Due to the ISDA's lack of transparency we ask that specific regulations or guidance regarding ISDA remain in the rule.

2. Definitions: We have the following concerns on the following definitions in the rule.

a. Limited Supervision (#18)

V2C Comment: Personnel new to pesticide application should not be allowed to apply pesticides with limited supervision due to inexperience and the potential of improper application leading to water quality and aquatic impacts (depending on location of application) and public health impacts depending on distance from humans in the area. We ask the proposed language be updated to read ***"Pertains to the supervision of a currently licensed pesticide applicator who holds the Commercial Apprentice (CA) category. The Supervising Applicator will be currently licensed in the same category necessary for the pesticide application, and is limited to supervising a maximum of two Commercial Apprentice applicators and must maintain **direct on-site immediate communications (voice) radio, cellular telephone, or similar** with the supervised applicators for the duration of all pesticide applications."***

b. On-Site Supervision (#20) – Pertains to the application of Restricted Use Pesticides (RUP): On-Site Supervision of an unlicensed pesticide applicator or a pesticide applicator who does not hold an appropriate category for the RUP being applied. Supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be in a position to direct the actions of the pesticide applicator. The supervising applicator may not supervise more than two pesticide applicators.



Vision 2C Comment: Application of pesticides, regardless of the type, should require on-site supervision for not just individuals applying restricted use pesticides, but also for Commercial Apprentice (CA) category licensee. Inexperience and improper pesticide application will undoubtedly result in water quality and/or aquatic impacts (depending on proximity to water source) and/or potential public health exposure concerns if humans are within close proximity. Pesticide application should not be taken lightly as improper use can result in impacts to natural resources and human health.

3. IDAPA 02.03.03.100.03.b/c/e: *Licensing Professional Application and Pesticide Dealers*

b. Proctored and monitored by ISDA staff or administered by a designated authorized agent following approved Department procedures.
~~Examinations are (3-20-20)T()~~

Vision 2C Comment: Concern the exam is proctored and monitored by ISDA or designed person is unacceptable. It's like the fox guarding the hen house. ISDA issues pesticide application licenses and is also responsible for compliance of proper application, compliance, and enforcement. Thus far it's difficult to determine how you can maintain independence. We advice the department to explore alternate testing structures to promote independence and to continue working with the University of Idaho to address problem areas through more education and training opportunities.

c. Given only to a person who presents valid government-issued identification

Vision 2C Comment: What is meant by valid government-issued identification? What exactly are you looking for a state issued identification card, a passport, a permanent resident card, etc?

e. Retaken after a minimum waiting period of one (1) week is required before an applicant may retake an examination. (3-20-20)T()

Vision 2C Comment: Is there more than one version of the exam that is proctored? If an exam is taken on a weekly basis and the individual is not able to pass the exam then they shouldn't be allowed to take it for a specific timeframe.

4. IDAPA 02.03.03.100.04: *Categories*

a. 04: Proposed licensing for new category "Commercial Apprentice (CA)"

For conducting General Use Pesticide (GUP) foliar applications only in situations applicable to the OI, OH, AI, AH, GP, and RW categories. Persons with this category can only perform pesticide applications under ~~limited~~— on-site supervision, and cannot make any soil-active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants. Applicators with this category cannot supervise other pesticide applicators. This is a non-renewable license category.

Vision 2C Comment: Pesticide application, regardless of the type of pesticide, and if not applied per the label instructions, can result in adverse environmental (water quality/aquatic) and public health impacts due to exposure. Vision 2C does not support the proposed new "Commercial Apprentice" (CA) license category as currently identified. We propose the following specific change to the Category description, deletion of "limited" and inclusion of "direct on-site"



*"Persons with this category can only perform pesticide applications under **limited direct on-site** supervision, and cannot make any soil-active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants."*

5. IDAPA 02.03.03.100.06: Financial Responsibility:

Vision 2C Comment: We strongly recommend that ISDA revise this section to clearly note **"an applicator license not be issued by the ISDA until applicant submits their proof of financial responsibility."** It is important to ensure that financial responsibility and the appropriate documents are provided to the Department.

06.a, b, and d:

Vision 2C Comment: It appears the reference to "acceptable to the Director" is subjective. Due to the agencies lack of transparency, we strongly recommend "acceptable to the Director" be revised to read **"approved by the AG's Office and acceptable to the Director"**

6. IDAPA 02.03.03.100.07: Licensing and Recertification Period

a. **V2C Comments:** Section b.iii, iv, v: Please explain why these three items are proposed for deletion? Item iii indicates applicants will need to also pass a Safety and Law Recertification examination. Why is ISDA proposing deleting the requirement for this exam? We do not support deleting item iii. in this section, as we firmly believe that licensed pesticide applicators must understand the safety and law requirements when applying pesticides in any environment.



7. IDAPA 02.03.03.400: Pesticide Restrictions

a. Section 01.a and 01.b:

01. ON-SITE SUPERVISION OF NONCERTIFIED APPLICATORS

RESTRICTIONS. ~~Only a licensed professional applicator shall will operate or supervise the operation of commercial application equipment by being present during the time of operation..~~ An uncertified applicator may apply restricted use pesticides (RUPs) under on-site supervision of a professional applicator with the proper categories if: (3-20-20)T()

a. One or more of the following conditions are met:

i. Professional applicator has completed the Apprentice Category(CA).

ii. Uncertified applicator completes Applicator Core Competency (CO).

iii. Uncertified applicator has completed Worker Protection Standard (WPS) certification for

pesticide handler training or equivalent. ()

b. Supervision of the unlicensed pesticide applicators does not apply to:

i. Soil or area (space) fumigation RUPs.

ii. Supervision of unlicensed pesticide applicators does not apply to aerial or chemigation application of RUPs. ()

V2C Comments: The language in iii. should be clarified to indicate that only EPA-approved work place safety training material can be used to satisfy WPS requirements.

8. IDAPA 02.03.03.400: Pesticide Restrictions

a. Section 03.a

03. RESTRICTIONS TO PROTECT POLLINATORS.

a. Bee Restrictions. ~~Any~~ No pesticide that is toxic to bees shall will **not** be applied to any agricultural crop when such crop is in bloom or when bees



VISION2C RESOURCE COUNCIL

are actively foraging on blooming weeds in the crop being sprayed except during the period beginning three (3) hours before sunset until three (3) hours after sunrise. (3-20-20)T ()

V2C Comment: The first sentence in the Bee Restrictions section includes a double-negative. We believe what is meant in this sentence is that no pesticide toxic to bees will be applied to any agricultural crops when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop...

9. IDAPA 02.03.03.400: Pesticide Restrictions
 - a. Section 05: Wind Velocity Restrictions
 - b. Section 06: Low Flying Prohibitions

~~**05. WIND VELOCITY RESTRICTIONS.** No person shall apply any pesticide in sustained wind conditions exceeding ten (10) miles per hour or in wind conditions exceeding product label directions, except as provided in Subsection 400.05(e) (3-20-20)T~~

~~a. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. (3-20-20)T~~

~~b. Approval for Use of Other Application Techniques. Other pesticide application techniques or methods may be approved by the Director or his agent on a case-by-case basis. (3-20-20)T~~

~~c. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical distribution is adversely affected. (3-20-20)T~~

~~**06. LOW-FLYING PROHIBITIONS.** Aircraft pilots during spray operations are prohibited from turning or low-flying: (3-20-20)T~~

~~a. Over cities, towns, schools, hospitals and densely populated areas unless the pilot obtains an agreement in writing for pesticide applications from the authorized agent for the city, town, school, hospital, or densely populated area in question; or (3-20-20)T~~

~~b. Directly over an occupied structure without prior notification by some effective means such as daily newspapers, radio, television, telephone, or door-to-door notice. (3-20-20)T~~



VISION 2C RESOURCE COUNCIL

~~e. Restriction. The low flying restrictions listed in Subsection 400.06(a) shall only pertain to persons other than those persons whose property is to be treated.~~
~~(3-20-20)T~~

V2C Comments: The primary reason our organization is involved in this rulemaking is due to the proposed deletion of these two sections in the current IDAPA rules. We strongly request these two sections remain intact. We understand the aerial applicators lobbying firm has advocated for the removal of these two sections. It's ironic their efforts to remove these two sections come after the 2019 Memorial Day farmworker incident in Canyon County where farmworkers were exposed. According to what hospital personnel noted in the Incident Report *"There are multiple patients and it was an organophosphate."* We do not believe anyone in the community would support efforts by the aerial lobbying interest and ISDA of relieving themselves of their responsibility of responsible pesticide application, and holding irresponsible applicators responsible for actions impacting individuals and the environment, respectively. Farmworkers should not be subjected to pesticide exposure that ultimately has them showing up at the local hospital "foaming at the mouth" as one patient did as a result of the 2019 Memorial Day exposure incident. We have grave concerns with ISDA's oversight or lack thereof of the Worker Protections Standards program.

10. IDAPA 02.03.03.400: Pesticide Restrictions

- a. V2C Comments: Proposed new section 05: Phenoxy Herbicide Restrictions: Why is section c. *Hazard Area* and the associated table being deleted? If the information is still valid we ask the language remain in the rule.
- b. V2C Comments: Proposed new section 05.c: The IDAPA rule should provide concrete information and not subjective language like "satisfactory to the Director." Is there a scientific basis using specific



VISION2C RESOURCE COUNCIL

devices to indicate to the pilot of any aircraft the direction and velocity of the airflow, and indicate a temperature inversion by layering of smoke...”

c. V2C Comments: Original section 06: Application Near Hazard Areas. What has changed that has resulted in ISDA proposing this deletion? We ask that this section remain in the rules and not be deleted.

Thank you for the opportunity to provide important feedback on the proposed rulemaking. In addition, we have attached written testimony from José Ramirez, one of the farmworkers exposed in the Canyon County 2019 Memorial Day aerial application incident. It's important we remember improper and irresponsible application of pesticides impact human lives like that of José on a frequent basis throughout Idaho. Weakening existing pesticide application rules only increases the potential for increased pesticide exposure to the hundreds who grow and harvest our food.

Regards,

Marielena Vega

Vision 2C Resource Council Member

Attached: José Ramirez testimony



Testimony of José Ramirez (Translated from Spanish)

My name is Jose Ramirez and I was one of the people who were harmed in Parma on May 2019 while I was working in a hop field. I clearly remember that Sunday. There was about 23 of us working. Around 11 a.m. I noticed a crop duster in the distance. When I looked up again it was close to one of the posts where we string hops. He made a U turn. I didn't think he was going to spray while we were there so I kept working. Then I saw he sprayed the onion field next to us. He made another U turn close to us and sprayed that field again. All of the sudden, our eyes started to water and I noticed some of the women were coughing and gagging and we left the field. The people who were closer to the onion field including me, were the ones who got the worst of the drift. We did not have soap and water on site that was needed in case of an emergency like this.

I went home that day and I started feeling horrible. I came home and started vomiting uncontrollably. I woke up disoriented and I would go in and out of consciousness. I felt like I had not eaten in days. The contractor called and told us to go to the hospital because other people felt sick after the incident. My son drove me to the hospital and I went to the emergency room and that is where they put IV's in me on both arms so they can give me to something to counteract the effects from what the hospital staff felt was pesticide poisoning. They gave me a shower and they had a special team that I think were firefighters to help me detox from what made me feel very ill. I felt so much better after they gave me the medicine, but I still felt weak and I could not eat. We had to miss a week of work and lost wages. I have hospital and medication bills that have made it harder for us.

It makes me so angry to see how irresponsible the pilot was. I know that this could have been avoided. I always wear reflective gear that is required to work in hop fields as well as two others so we can be seen. We were told that the pesticides that the pilot sprayed were not bad, but what a coincidence that people started to feel sick and had to go to the hospital after the plane sprayed next to where we were working. It is hard to understand why this would happen.

We are human and honorable people and all we want to do is support our families, pay our bills, and put food on our tables. I think about this incident every time I see a crop duster working in agricultural fields. I always worry about the long term effects of this incident. Imagine if it happens to your wife and children. I was lucky that my family was working ahead of me and did not get the drift. If only people would put themselves in my



VISIÓN2C RESOURCE COUNCIL

place so they would understand. It makes me feel like no one cares about those of us who do this hard labor.

I do not want what happened to me to happen to other people in the future. I want families to be safe and not worry about getting sick from pesticides and the carelessness of those who apply them. This is why I oppose HB 487. I feel this bill will harm more people and pilots would be more careless and irresponsible. I hope you consider us and see us human beings, who all we want to do is live and work in a safe space. Thank you.

